

Stephen Nichols

From: Stephen Nichols
Sent: Thursday, April 10, 2014 12:37 PM
To: 'Alice Pare'
Subject: RE: ?

The automatic stay didn't prevent you from filing the counterclaim or going to trial. Before section 1115 was added in 2005 you could've also collected the judgment, but section 1115 now adds an individual debtor's postpetition property and earnings to the definition of property of the estate. I didn't draft the bankruptcy code. We are not willing to leave any money in the court registry. That's not how the automatic stay works. And I don't think your client wants to go the bankruptcy court having to argue a knowing violation of the automatic stay, as opposed to an inadvertent one. We are willing to forget about this and regard it as an innocent mistake if the writs are immediately withdrawn.

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From: Alice Pare [<mailto:parebankruptcy@ymail.com>]
Sent: Thursday, April 10, 2014 12:28 PM
To: Stephen Nichols
Subject: ?

Steve

I am confused. I asked if proceeding with the trial was a violation of the automatic stay. You said it was not. You directed me to the particular code section - I proceeded to trial relying on your representation that it was not a violation of the automatic stay. I am uncertain how it can be okay to proceed with the civil action, of course there was a possibility that the outcome of trial would be a judgment in favor of COTD. That's what happened. So we incurred the expense and risk of obtaining a judgment - and now we can't enforce it. If Hindin got a judgment - he could enforce it. I need to understand your rational.

I am willing to leave the money with the registry of the court while we resolve this issue. There seems to be an inherent contradiction

in your position. If I did not need a relief from stay to proceed with trial, how can I possibly need the relief to enforce the natural and predictable consequence of trial.

It was your position that this was postpetition.

Thanks.

Alice